LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 3 1969
JOHN F. DAVIS, CLERK

Supreme Court of the United States.

OCTOBER TERM, 1968.

No. 601

ROBERT H. HOWIE, JR.,
Petitioner,
v.
COMMONWEALTH OF MASSACHUSETTS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS.

ESTHER M. STEVENS,
15 Court Square,
Boston, Massachusetts 02108,
Counsel for Petitioner.

ADDISON C. GETCHELL & SON, INC., LAW PRINTERS, BOSTON.

Table of Contents.

Opinion below	1
Jurisdiction	1
Statute involved	2
Statement of the case	2
Questions presented	3
Reasons for granting the writ	3
The Ninth Amendment	4
The Fourteenth Amendment	4
Police power	7
Legislation against a class	9
Conclusion	11
Appendix A	12

Table of Authorities Cited.

Cases.

Berman v. Parker, 348 U.S. 26 (1954)	7
Gaines & Co. v. Holmes, 154 Ga. 344, 355	8
Griswold v. Connecticut, 381 U.S. 479, 493 (Goldberg, J.)	6
Grosjean v. American Press Co., 297 U.S. 233, 244	7
Jacobson v. Massachusetts, 197 U.S. 11, 29 (1905) (dictum of the Court)	7
Janesville v. Carpenter, 77 Wis. 288	9
Kovacs v. Cooper, 336 U.S. 77 (1949)	7
Marbury v. Madison, 1 Cranch 137, 176-177	9
Mugler v. Kansas, 123 U.S. 623, 661, 663	8

New Orleans Gas Co. v. Louisiana Light Co., 115 U.S. 650 (1885) 7

Olmstead v. United States, 277 U.S. 438, 478 (Brandeis, J. dissenting) 10

Panhandle Eastern Pipe Line Co. v. State Highway Commission, 294 U.S. 613, 622 (1935) 5

People v. City of Chicago, 413 Ill. 83, 108 N.E. 2d 16, 21 (1952) 5

Spann v. Dallas, 235 S.W. 513 6

Thomas v. Collins, 323 U.S. 516, 530 (Rutledge, J.) 6

STATUTES.

U.S. Constitution, Ninth and Fourteenth Amendments 3, 4, 6, 11

Mass. Constitution, Art. I 6

28 U.S.C. § 1257 1

Mass. Acts 1967, c. 13 2

MISCELLANEOUS.

"The Forgotten Ninth Amendment" by Bennett B. Patterson (1955) 5

"The history of liberty is the history of the limitation of governmental power." Woodrow Wilson 11

Supreme Court of the United States.

OCTOBER TERM, 1968.

No.

ROBERT H. HOWIE, JR.,
Petitioner,
v.
COMMONWEALTH OF MASSACHUSETTS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS.

Robert H. Howie, Jr., petitioner, prays that a writ of certiorari issue to review the judgment of the Supreme Judicial Court of Massachusetts entered on June 5, 1968.

Opinion Below.

The opinion of the Supreme Judicial Court of Massachusetts is printed in Mass. Adv. Sh. (1968) 937-938 (Appendix A, *infra*, p. 12).

Jurisdiction.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1257.

The petitioner submits this statement to show that the Supreme Court of the United States has jurisdiction of this petition, and that substantial Federal constitutional questions are presented.

Statute Involved.

Acts of 1967, c. 13: "The first paragraph of section 7 of chapter 90 of the General Laws is hereby amended by adding the following sentence:—Every person operating a motorcycle or riding as a passenger on a motorcycle or in a sidecar attached to a motorcycle shall wear protective head gear conforming with such minimum standards of construction and performance as the registrar may prescribe."

Statement of the Case.

An agreed statement of facts was entered into by the parties, part of which is as follows: that the petitioner did operate a motorcycle on a public way, on August 18, 1967, in Belmont, Commonwealth of Massachusetts, and, while so operating, he was not wearing any form of head gear.

A citation was issued by a police officer, and at the trial the petitioner filed a motion to dismiss, and in support of said motion submitted the following:

> "1. The offense charged in this complaint is in violation of the following provisions of the United States Constitution and the Constitution of the Commonwealth of Massachusetts.
>
> "A. The Ninth Amendment—in that it conflicts with the defendant's right of privacy.

"B. The Fourteenth Amendment—in that it conflicts with the defendant's right to be free from State deprivation of . . . . 'liberty . . . . without due process of law' and the defendant's right to 'equal protection of the laws.'

"C. Article I of the First Constitution of the Commonwealth of Massachusetts—in that it conflicts with the 'right of enjoying . . . . their Liberty . . . . seeking and obtaining' the defendant's 'safety and happiness.' "

The Court refused to grant the motion to dismiss.

The defendant was found guilty and appealed. The case came before the Supreme Judicial Court of Massachusetts in due course, and was decided on June 5, 1968. The Supreme Judicial Court upheld the statute in question, and its decision is set forth in Appendix A, *infra*. On September 3, 1968, Mr. Justice Marshall entered an order extending the time for filing a petition for a writ of certiorari in the above entitled cause to and including October 3, 1968.

Questions Presented.

The basic question is whether the Massachusetts statute, chapter 13 of the Acts of 1967, is repugnant to the Ninth Amendment and the Fourteenth Amendment to the Constitution of the United States, or involves any other denial of Federal right.

Reasons for Granting the Writ.

Petitioner asks that this Court grant certiorari in this case to review the question posed. It is of pressing public

importance, as many states have promulgated similar laws to the one in issue, and there have been varied decisions. This case presents to this Court an opportunity to clarify the question of constitutionality of such a statute, and to eliminate the confusion between the states in this regard. Consistency is to be desired and travel between states will be facilitated. Constitutional rights will be protected.

The Ninth Amendment

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Fourteenth Amendment

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . nor deny to any person within its jurisdiction the equal protection of the laws."

"The Ninth Amendment in the Constitution is the counterpart of the 'general welfare' clause. It protects the individual in the same manner that the general welfare clause protects the public."

"The entire context of the Ninth Amendment, and its historic background, definitely prove that it was intended solely as a protection of our unenumerated personal rights as individuals as distinguished from our public or collective rights. This concept is necessary to maintain an even balance in the Constitution."

"The results which are sought to be accomplished have frequently been used to justify the means of accomplishment. Our individual liberties are in danger of being over-

whelmed by public necessities. The trend is now towards expediency, and our executives and administrative bodies, legislatures, and even our courts have been able to rationalize and justify almost any measure which the general public demands, under the theory that it is good for the general welfare and common good. This has in a large measure been to the disparagement of private rights and individual genius."

"Whenever we lose the distinction between individual liberty and the necessities of the general welfare, the virtue of our form of government is lost, and we have nothing but the worst form of tyranny. . . ."

All of the above quotations are from "The Forgotten Ninth Amendment," by Bennett B. Patterson (1955).

"Under [the police power] there is no unrestricted authority to accomplish whatever the public may presently desire."

Panhandle Eastern Pipe Line Co. v. *State Highway Commission*, 294 U.S. 613, 622 (1935).

"The legislature may not, . . . under the guise of protecting the public interest, interfere with private rights."

People v. *City of Chicago*, 413 Ill. 83, 108 N.E. 2d 16, 21 (1952).

If it should be argued in support of the statute in question that the loss of a part is a loss to the whole and that the protection by the state of an individual, even against his will, may be construed to be in the public interest, it should be pointed out that the purpose of our founding fathers in framing the United States and State Constitutions was to provide a safe environment in which states, corporations, families and individuals could be free to live and grow and

to enjoy their "unalienable rights . . . of seeking and obtaining their safety and happiness." Article I, Massachusetts Constitution. Certainly their purpose was not to mask the individual and individual rights behind an impersonal body called the State. Their desire to avoid an all-powerful state led to the adoption of the first eight amendments to the United States Constitution and led James Madison to reassert the individual's fundamental rights in the Ninth Amendment, the right to privacy.

"Since the right of the citizen to use his property as he chooses, so long as he harms nobody, is an inherent and constitutional right, the police power cannot be invoked for the abridgement of a particular use of private property, unless such use reasonably endangers or threatens the public health, the public safety, the public comfort or welfare. . . ."

Spann v. *Dallas,* 235 S.W. 513.

". . . any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger."

Thomas v. *Collins,* 323 U.S. 516, 530 (Rutledge, J.).

"In sum, the Ninth Amendment simply lends strong support to the view that the 'liberty' protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight amendments."

Griswold v. *Connecticut,* 381 U.S. 479, 493 (Goldberg, J.).

"The word 'liberty' contained in that amendment embraces not only the right of a person to be free from phys-

ical restraint, but the right to be free in the enjoyment of all his faculties as well." Fourteenth Amendment.

Grosjean v. *American Press Co.*, 297 U.S. 233, at p. 244.

It is an unconstitutional interference with private rights to require an individual, solely for his own safety and at his own expense, to take affirmative action (wearing a helmet), infringing on his enjoyment of his personal property while traveling on the public ways of the Commonwealth.

"There is, of course, a sphere within which the individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will."

Jacobson v. *Massachusetts*, 197 U.S. 11, 29 (1905) (dictum of the Court).

Police Power.

Police power includes the power to enact laws within constitutional limits to promote public safety, public health, morality, peace and quiet, law and order, community well-being and tranquillity, but from its nature it is incapable of exact definition.

Berman v. *Parker*, 348 U.S. 26 (1954).
Kovacs v. *Cooper*, 336 U.S. 77 (1949).
New Orleans Gas Co. v. *Louisiana Light Co.*, 115 U.S. 650 (1885).

A distinction should be emphasized between regulations imposed on a particular operator for the benefit of operators and regulations imposed on a manufacturer of motor

vehicles with regard to equipment and the present type of regulation, which is aimed at and will affect only the particular user's enjoyment of his own property.

"If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects, it is a palpable invasion of rights secured by the fundamental law, and it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

Gaines & Co. v. *Holmes,* 154 Ga. 344, 355.

"It does not at all follow that every statute enacted ostensibly for the promotion of these ends, is to be accepted as a legitimate exertion of the police powers of the State. There are, of necessity, limits beyond which legislation cannot rightfully go. . . . the courts must obey the Constitution rather than the law-making department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed."

". . . the State, when providing, by legislation, for the protection of the public health, the public morals, or the public safety, is subject to the paramount authority of the Constitution of the United States, and may not violate rights secured or guaranteed by that instrument, or interfere with the execution of the powers confided to the general government."

"The courts are not bound by mere forms, nor are they to be misled by mere pretences. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority."

Mugler v. *Kansas,* 123 U.S. 623, 661, 663.

"To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation."

Marbury v. *Madison*, 1 Cranch 137, 176-177.

While it is true that a proper exercise of police power may involve limitation of the use and enjoyment of private property without violation of the due process clause of the Constitution, the police power must be exercised for the "general" welfare, the "common" good, the "public" health, safety or morals.

Legislation against a Class.

A classification against the motorcyclist has been made by the Legislature which can be shown to be essentially arbitrary and therefore illegal. The operator of a motorcycle thus is denied the same rights and privileges as the operators of other road vehicles.

There is no reasonable basis for the assumption that a helmet will benefit the operator of a motorcycle to a greater degree than a helmet might benefit the operator of an automobile or a truck. The Legislature's decision to classify and regulate motorcycle operators was unreasonable and arbitrary, and the statute is therefore unconstitutional.

"Restrictions upon the use of property by its owner cannot be purely arbitrary. They must be in some degree necessary to protect the legitimate interests of others."

Janesville v. *Carpenter*, 77 Wis. 288.

"The protection guaranteed by the [Fourth and Fifth] Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men."

Olmstead v. *United States,* 277 U.S. 438, 478 (Brandeis, J., dissenting).

The individual's inalienable rights of "seeking and obtaining their safety and happiness" have been abridged by the statute in question, and the burden placed upon him is oppressive. He is compelled to purchase, at his own expense, what is essentially an article of personal apparel, merely so he can use his own personal property. When he arrives at his destination, he must carry his helmet with him, since he cannot lock it up or leave it on the handle bars. To many people helmets are uncomfortable, irritating and distracting. They tend to decrease operator efficiency and reduce hearing ability, as well as to limit lateral vision. If the operator of a motorcycle feels he may be in less danger of collision or upset by failing to wear a helmet under the statute, he is not free to exercise his judgment in this respect. Wearing a helmet does nothing to prevent the accident itself; it seeks only to lessen the consequences and, indeed, could increase the possibility of an accident.

It is not constitutionally permissible for the Legislature, on the pretense of regulating the use of highways, to regulate in fact the user's private rights which are unaffected with a public interest. Hence it is not a proper exercise of the police power of the state which does not include the right to regulate one's conduct solely for his own protection, and is therefore unconstitutional.

"Liberty has never come from the government. . . . The history of liberty is the history of the limitation of governmental power, not the increase of it." Woodrow Wilson.

The validity of the statute is assailed as violating the Federal Constitution in that it is in contravention of the Ninth Amendment and of the due process clause contained in the Fourteenth Amendment. It denies the petitioner the equal protection of the laws and abridges his freedom.

Conclusion.

For the foregoing reasons, petitioner respectfully requests this Honorable Court to grant this petition for a writ of certiorari.

Respectfully submitted,

ESTHER M. STEVENS,
15 Court Square,
Boston, Massachusetts 02108,
Counsel for Petitioner.

[Appendix follows.]

Appendix A.

COMMONWEALTH *vs.* ROBERT H. HOWIE, JR.

[Rescript Opinion.]

The defendant appeals from a finding of guilty of violating G. L. c. 90, § 7, for not wearing protective headgear while operating a motorcycle. Upon appeal from a finding in the District Court the case was heard by a judge sitting without jury in the Third District Court of Eastern Middlesex under St. 1964, c. 628. The defendant filed a written motion to dismiss which was denied, and he was again found guilty. The defendant excepts to the denial of his motion to dismiss. There was no error. General Laws c. 90, § 7, requires every person operating or riding a motorcycle to wear protective headgear conforming with certain minimum standards. It lies within the power of the Legislature to adopt reasonable measures for the promotion of safety upon public ways in the interests of motorcyclists and others who may use them. *Commonwealth* v. *Boston & Maine Transp. Co.* 282 Mass. 345, 348. The act of the Legislature bears a real and substantial relation to the public health and general welfare and is thus a valid exercise of the police power. *Coffee-Rich, Inc.* v. *Commissioner of Pub. Health,* 348 Mass. 414, 422. As contended by the Commonwealth, "[t]he legislation is reasonable, applies to all equally, and is directly related to highway safety." See *Hall-Omar Baking Co.* v. *Commissioner of Labor & Indus.* 344 Mass. 695, 700. A recent Michigan decision to the contrary is not persuasive. On this general subject we find ourselves in agreement with *Colvin* v. *Lombardi,* R.I. ,[a] decided May 8, 1968.

Exceptions overruled.

---

[a] (May 28, 1968) 36 U. S. L. Week 2732.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 6 1968
JOHN F. DAVIS, CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1968

No. 601

ROBERT H. HOWIE, JR.,
PETITIONER,

v.

COMMONWEALTH OF MASSACHUSETTS,
RESPONDENT.

BRIEF OF THE COMMONWEALTH IN OPPOSITION TO THE WRIT OF CERTIORARI

ELLIOT L. RICHARDSON
Attorney General
JOHN J. DRONEY
District Attorney for
The Northern District
HENRY OWENS, JR.
Assistant District Attorney

RUTH I. ABRAMS
WILLIE DAVIS
Assistant Attorney General
with him on the brief.

Blanchard Press, Inc., Boston, Mass. — Law Printers

TABLE OF CONTENTS

	Page
Opinion Below	1
Jurisdiction	1
Statement of Facts	2
Issues Involved—The Motion to Dismiss	2
Statute Involved	3
Argument	
A. The statute is a valid exercise of police power and is constitutional	4
B. There is nothing unconstitutional in requiring all persons who ride motorcycles to wear headgear while on public highways	9
Conclusion	11
Appendix A. (Rescript Opinion)	12
Appendix B. (Registry of Motor Vehicles Accident Statistics)	13
Appendix C. (U.S. Department of Transportation Highway Safety Program Standard 4.4.3)	15
Appendix D. (Motorcycle Facts)	18

TABLE OF CITATIONS

Cases

Coffee-Rich, Inc. v. *Commissioner of Public Health*, 348 Mass. 414	5
Commonwealth v. *Boston & Maine Trans. Co.*, 282 Mass. 345	4
Commonwealth v. *Chamberlain*, 343 Mass. 49	8
Commonwealth v. *Finnigan*, 326 Mass. 378	9
Commonwealth v. *Slocum*, 230 Mass. 180	4
Commonwealth v. *Zimmerman*, 221 Mass. 184	12
Ginsburg v. *New York*, —— U.S. ——, 36 L.W. 4295	10
Hall-Omar Baking Co. v. *Commissioner of Labor and Industries*, 344 Mass. 695	9, 12

Page

Howe Bros. Co. v. *Unemployment Compensation Commission*, 296 Mass. 275, cert. den. 300 U.S. 657 ... 8
McGowan v. *Maryland*, 366 U.S. 420 ... 9
Paddock v. *Brookline*, 347 Mass. 230 ... 12
People v. *Bielmeyer*, 282 N.Y.S. 2d 797 ... 6
People v. *Carmichael*, 279 N.Y.S. 2d 272 (April 1967) ... 7
People v. *Newhouse*, 287 N.Y.S. 2d 713 (Jan. 1968) ... 7
People v. *Schmidt IV*, 283 N.Y.S. 2d 290 (Sep. 1967) ... 6
People v. *Smallwood*, 277 N.Y.S. 2d 429 (Feb. 1967) ... 7
Roberto v. *Department of Public Utilities*, 262 Mass. 538 ... 4
Russell v. *Treasurer & Receiver General*, 331 Mass. 501 ... 11

Statutes

28 U.S.C. 1257 ... 1
Department of Transportation Act, Pub. L. 89-568, 80 Stat. 939 ... 10
Highway Safety Act of 1966, Pub. L. 89-564, 80 Stat. 731 ... 10
National Traffic and Motor Vehicle Safety Act of 1966 Pub. L. 89-533, 80 Stat. 718 ... 10
Massachusetts General Laws:
c. 90 §7 ... 3
Massachusetts Acts of 1966, c. 655 ... 10
Massachusetts Acts of 1967, c. 13 ... 3

Constitutional Provisions

United States Constitution:
Ninth Amendment ... 2, 3
Fourteenth Amendment ... 2, 3
Constitution of the Commonwealth of Massachusetts Article I ... 2, 4

In the
Supreme Court of the United States

OCTOBER TERM, 1968

No.

ROBERT H. HOWIE, JR.,
PETITIONER,

v.

COMMONWEALTH OF MASSACHUSETTS,
RESPONDENT.

BRIEF OF THE COMMONWEALTH IN OPPOSITION TO THE WRIT OF CERTIORARI

Opinion Below

The opinion of the Supreme Judicial Court of Massachusetts is printed in Mass. Adv. Sh. (1968) 937-938. The opinion is reproduced (Infra, Appendix Ap. 12).

Jurisdiction

The Commonwealth contends that there is no jurisdiction since the statute regulates the conditions under which local public highways may be used by motor vehicles. Jurisdiction is claimed by the defendant under 28 U.S.C. Section 1257 without designation of which part of 1257 the claim is being made.

Statement Of Facts

The parties agreed that the defendant did operate a motorcycle on Grove Street, Belmont, a public way, on August 18, 1967, and while so operating he was not wearing any form of head gear. A citation was issued by a Police Officer.

The defendant filed a written motion to dismiss setting forth therein the basis of said motion. The Court denied said motion and made a finding of guilty on the complaint. The defendant objected to the denial of the motion and took exception thereto.

Issues Involved
The Motion To Dismiss

Now comes the defendant in the above-entitled matter, and respectfully moves that this Honorable Court dismiss the said charges against the defendant, and in support of said motion submits the following:

1. The offense charged in this complaint is in violation of the following provisions of the United States Constitution and the Constitution of the Commonwealth of Massachusetts.

   A. The Ninth Amendment—in that it conflicts with the defendant's right of privacy.

   B. The Fourteenth Amendment—in that it conflicts with the defendant's right to be free from State deprivation of . . "liberty . . . without due process of law" and the defendant's right to "equal protection of the laws."

   C. Article I of the First Constitution of the Commonwealth of Massachusetts—in that it conflicts with the right of enjoying . . . their Li-

berty . . . seeking and obtaining" the defendant's "safety and happiness."

The Defendant duly claimed exemption to the denial of his motion to Dismiss.

Statute Involved

General Laws chapter 90, section 7. Brakes, Lights and Other Equipment. Acts 1967, Chapter 13, amends the first paragraph of Section 7 of General Laws chapter 90 by adding the following sentence:

> "Every person operating a motorcycle or riding as a passenger on a motorcycle or in a sidecar attached to a motorcycle shall wear protective head gear conforming with such minimum standards of construction and performance as the registrar may prescribe."

United States Constitution

Ninth Amendment

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Fourteenth Amendment

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . .nor deny to any person within its jurisdiction the equal protection of the laws."

MASSACHUSETTS CONSTITUTION

Article I

"All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness."

Argument

A. THE STATUTE IS A VALID EXERCISE OF POLICE POWER AND IS CONSTITUTIONAL.

The General Court "may adopt every reasonable measure to promote safety of travel upon public ways." *Commonwealth* v. *Boston & Maine Trans. Co.*, 282 Mass. 345, 348. "The police power extends to the reasonable control of travel upon highways in the interest of the public." See *Commonwealth* v. *Slocum*, 230 Mass. 180, 190. "The Commonwealth has power to prescribe the conditions under which public ways may be used by motor vehicles . . ." *Roberto* v. *Department of Public Utilities*, 262 Mass. 538, 587.

"All rational presumptions are made in favor of the validity of every legislative enactment. Enforcement is to be refused only when it is in manifest excess of legislative power." *Commonwealth* v. *Finnegan*, 326 Mass. 378, 379. "It is not for us to inquire into the expediency or the wisdom of the legislative judgment. Unless the act of the Legislature cannot be supported upon any rational basis of fact that reasonably can be conceived to sustain it, the court has no power to strike it down as violative of the Constitution. . ."

Coffee-Rich, Inc. v. *Commissioner of Public Health*
348 Mass. 414, 422.

Three New York lower Courts, in considering the New York counterpart to our statute found the New York statute constitutional.

> "...Pursuant to this power it would seem only reasonable that the state have the right to reasonably regulate how riders and passengers of vehicles susceptible to special dangers and risks should protect themselves on public property. However, there is another, and perhaps more important reason, for believing the law in question to be constitutional. *I believe that there is in fact a real danger to other citizens when a motorcyclist fails to use protective helmets.* And if this is so there is no doubt of the state's right to regulate regardless of what definition of "police power" one uses. (emphasis supplied).
>
> "A mtorcycle is a comparatively light machine which is delicately balanced when operated. There are special conditions, situations or occurrences which could cause a driver to be propelled off the *road or into the opposite lane causing damage to other vehicles or property or injuries to passengers or pedestrians.* (emphasis supplied).
>
> "The old joke about the happy motorcyclist—'the one with the bugs on his teeth"—is not too funny when one hears or reads about instances where cyclists have been hit with hard-shelled beetles or bees and have lost control of their bikes, causing damage and injuries to others.
>
> "Cyclists generally keep to the right of the road where stones and gravel are found which could be propelled by the delicately balanced wheels into the

head of the cyclist or passenger, causing distraction and loss of control.

"Far more than with an automobile or a truck the very nature of a motorcycle requires that a rider be able to control his vehicle at every second. Physicists do not yet know the exact principle which keeps a cycle erect and moving. The successful and enjoyable operation of a motorcycle can only be had when there is a true "man-machine team". The "two" are more truly "one" than with any other means of conveyance. This fact no doubt adds to the enjoyment, excitement and popularity of motorcycling. However, it also means that the rider must always wear the recommended clothing and equipment for his protection as well as the protection of others. This the state has recognized and has a right to insist upon.

"The law in question also requires passengers to wear protective helmets. Although not required to rule upon that question of the law, the court is of the opinion that *passengers are just as susceptible to head injuries as operators and a head injury to a passenger could sufficiently distract a driver to create a danger to other users on the highway.*

"Therefore, it is the decision of the court that under any interpretation of the concept of "police power", *the law is constitutional.* Also, since the defendants have admitted all the factual allegations made against them and since they have raised only the constitutional question, all the defendants herein are found guilty as charged." *People* v. *Bielmeyer*, 282 N.Y.S. 2d 797, 709-801. (Aug. 1967) (emphasis supplied).

Again, in *People* v. *Schmidt IV*, 283 N.Y.S. 2d 290, 292, 293, (Sep. 1967) a New York Court wrote:

"The remaining question concerns the power of the state to regulate individual conduct. The court takes judicial notice of certain dangers inherent in the operation of motorcycles as compared to that of automobiles. The danger of flying stones or other objects from the wheels of moving vehicles is a real one. A blow on the *head of a cyclist not only could endanger himself, but be the cause of injury or death to other users of the public highways. To prevent such possible occurrences is a valid objective for legislative action under the general police power of the state.*

"The courts have held that driving upon our public highways is a privilege and not a right. A person with impaired vision, for example, may be denied an operator's license. Such regulation is a legitimate use of the state's police power. In the field of public safety the legislature should have more latitude in regulating individual conduct. I find the conduct regulated by this subdivision is not beyond the scope of legislative action." (emphasis supplied).

Cf *People* v. *Smallwood*, 277 N.Y.S 2d 429; (Feb. 1967), *People v. Carmichael*, 279 N.Y.S. 2d 272. (April 1967).

Again in *People* v. *Newhouse*, 287 N.Y.S. 2d, 713, 715 (Jan. 1968), a New York Court wrote:

"As for the defendant's argument that the section limits one's personal freedom I find the argument untenable. In an organized society every person is required to exercise a certain amount of restraint and limit certain of his animal instincts, in order to exist, without complete chaos taking place. For example, the enactment of speed limits curtails one's rights; the enactment of certain health laws such as

quarantines or the requirement of inoculations curbs one's rights not to submit to them; the limitation of selling intoxicating beverages to those over eighteen years of age limits both the seller and underage consumer; the enactment of legislation curbing the sale of pornographic literature is a further example of limitation of one's rights.

"I consider the enactment of legislation requiring the use of helmets as a reasonable exercise of police power. *The prevention of critical head injuries and possible thrusting of those so injured as a burden of society is sufficient in and of itself.* The prevention of a motorcycle careening out of control and causing injury to innocent people as the result of an object striking a motorcycle operator in the head is further proof of the need for such a law. One only needs to refer to the comprehensive legislative study for a very adequate reason for the enactment of the section."

The statute is reasonable and bears some relationship to the object intended to be accomplished. The statistics of injuries and fatalities in motorcycle accidents provides a rational basis for the legislation. Of course, every presumption is indulged in favor of the validity of a statute. See *Howes Bros. Co.* v. *Unemployment Compensation Commission*, 296 Mass. 275, 283-284, cert. den. 300 U.S. 657.

The appellants have not shown that there is no conceivable ground for sustaining the statute. This is their burden. See *Commonwealth* v. *Chamberlain*, 343 Mass. 49, 51.

"All rational presumptions are made in favor of the validity of every legislative enactment. Enforcement

> is to be refused only when it is in manifest excess of legislative power. *Druzik* v. *Board of Health of Haverhill,* 324 Mass. 129, 128." *Commonwealth* v. *Finnigan,* 326 Mass. 378, 379.

This statute has a legitimate legislative purpose, is reasonable, rational and is clearly within the police powers of the Commonwealth. The crisis on the highways of Massachusetts clearly indicates that unless safety measures are adopted, fatalities and accidents will continue to grow in number and seriousness. Clearly the legislature is empowered to act to protect all persons using its highways.

B. THERE IS NOTHING UNCONSTITUTIONAL IN REQUIRING ALL PERSONS WHO RIDE MOTORCYCLES TO WEAR HEADGEAR WHILE ON PUBLIC HIGHWAYS.

In *McGowan* v. *Maryland,* 366 U.S. 420, 425, the Supreme Court wrote:

> "Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. *The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective.* State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." (emphasis supplied)

In *Hall-Omar Baking Co.* v. *Commissioner of Labor and Industries,* 344 Mass. 695, 700, the Supreme Judicial Court wrote:

"Legislative classification is valid if it is rational and bears some relationship to the object intended to be accomplished."

Again in *Ginsburg* v. *New York*, U.S. 36 L.W. 4295, the Supreme Court upheld the validity of legislation aimed at protecting a class as being rational and constitutional.

The Registry of Motor Vehicles statistics for this Commonwealth indicate that the chance of death or injury is approximately one-third greater if a person is riding a motorcycle at the time of an accident rather than being in an automobile. See Appendix A. (page 13 and 14)

It should be noted that the grim toll of Americans lost and maimed on the Nation's highways has been so great that the federal government has taken the lead in attempting to curtail death and injury on the highways: See *The National Traffic and Motor Vehicle Safety Act of 1966* (Pub L. 89-533, 80 Stat. 718); *The Highway Safety Act of 1966* (Pub. L. 89-564, 80 Stat. 731); and the *Department of Transportation Act* (Pub. L. 89-568, 80 Stat. 939). The Highway Safety Program standards for Motorcycle Safety are set forth in Appendix C & D (pages 15 thru 32).

Massachusetts has been attempting to regulate its highways to insure better safety for all its citizens. See, for example, Chapter 655 of the Acts of 1966 setting forth tire standards and making it illegal to sell or offer to sell any tire which fails to comply. Section 7 of Chapter 90 is a public safety measure applying equally to all using motorcycles on Massachusetts highways. "There is no arbitrary discrimination in a classification which is rational in scope and effect and bears some manifest relation to the main object sought to be accomplished. Such classification does not create inequity before the law." See *Russell* v. *Trea-*

surer & Receiver General, 331 Mass. 501, 508. *Commonwealth* v. *Zimmerman*, 221 Mass. 184, 189-190.

The statute involved applies to all persons similarly situated. For an example of arbitrary legislation see *Paddock* v. *Brookline*, 347 Mass. 230, 233-236.

Appellants argue that their fatality rate is no greater than that of Class 2C drivers. Firstly, there are no statistics which support appellant's argument. Secondly, in this Commonwealth, statistics indicate that the chances of injury or fatality to a motorcyclist or passenger involved in an accident are one-third greater than the same accidents and injuries in automobiles. Appellant's own figures show a fatality rate 3 times greater by motorcyclists as compared with autombile drivers. The legislation is rational in scope and effect.

The legislation is reasonable, applies to all equally, and is directly reated to highway safety. Even ". . . if the question is fairy debatable, courts cannot substitute their judgment for that of the Legislature." See *Hall-Omar Baking Co.* v. *Commissioner of Labor & Industries*, 344 Mass. 695, 700. The grim statistics of our highways give ample reason for legislative action.

Conclusion

For the reasons stated in this brief the Commonwealth respectfully requests this Honorable Court to deny this writ.

Respectfully submitted
For the Commonwealth,
ELLIOT L. RICHARDSON
Attorney General
JOHN J. DRONEY
District Attorney for
The Northern District
HENRY OWENS, JR.
Assistant District Attorney

RUTH I. ABRAMS
WILLIE DAVIS, *Assistant Attorney General*
with him on the brief.

Appendix A.

COMMONWEALTH *vs.* ROBERT H. HOWIE, JR.
[Rescript Opinion.]

The defendant appeals from a finding of guilty of violating G. L. c. 90, § 7, for not wearing protective headgear while operating a motorcycle. Upon appeal from a finding in the District Court the case was heard by a judge sitting without jury in the Third District Court of Eastern Middlesex under St. 1964, c. 628. The defendant filed a written motion to dismiss which was denied, and he was again found guilty. The defendant excepts to the denial of his motion to dismiss. There was no error. General Laws c. 90, § 7, requires every person operating or riding a motorcycle to wear protective headgear conforming with certain minimum standards. It lies within the power of the Legislature to adopt reasonable measures for the promotion of safety upon public ways in the interests of motorcyclists and others who may use them. *Commonwealth* v. *Boston & Maine Transp. Co.* 282 Mass. 345, 348. The act of the Legislature bears a real and substantial relation to the public health and general welfare and is thus a valid exercise of the police power. *Coffee-Rich, Inc.* v. *Commissioner of Pub. Health,* 348 Mass. 414, 422. As contended by the Commonwealth, "[t]he legislation is reasonable, applies to all equally, and is directly related to highway safety." See *Hall-Omar Baking Co.* v. *Commissioner of Labor & Indus.* 344 Mass. 695, 700. A recent Michigan decision to the contrary is not persuasive. On this general subject we find ourselves in agreement with *Colvin* v. *Lombardi,* R.I. , *decided May 8, 1968.

Exceptions overruled.

---

* (May 28, 1968) 36 U. S. L. Week 2732.

Appendix B.

Registry of Motor Vehicles Accident Statistics

During the year 1965, Registry of Motor Vehicles statistics indicate that when motorcycles, motorbikes and scooters are involved in accidents, in 95% of the involvements, the bike riders are killed or injured. (2.3% fatal-92.5% non-fatal). When other types of vehicles are involved in accidents, injuries, fatal and non-fatal, occur in 69.4% of the involvements.

In 1966, the ratio was 94.7% killed or injured on motorcycles, as against 67.7% for all other motor vehicles.

An analysis of the accident reports for the years 1965 and 1966 is found on the next page.

Vehicle Type	*Year*	*Fatal*	*Non-Fatal*	*Property Damage*	*Total Vehicle Involvement*
Motorcycles, Motor-bikes, scooters	1965	32	1313	75	1420
		2.3%	92.5%	5.2%	100%
All other motor vehicles	,,	950	145,633	64,711	211,294
		0.4%	69.0%	30.6%	100%
Motorcycles, Motor-bikes, scooters	1966	*38	1506	77	1621
		2.3%	92%	4.8%	100%
All other motor vehicles	,,	1,098	158,188	76,187	235,473
		0.5%	67.2%	32.3%	100%

* In 1966, more detailed records were maintained, and during that year, the 38 fatal accidents involved three motor-bikes, 5 scooters and 30 motorcycles; killed, were 31 operators and eight passengers on these vehicles. 34 of the fatal accidents were studied by the Registry. In 30 cases the medical examiner's report lists the cause of death as head injury, skull fracture with brain laceration; in the remaining 4, 1 was crushed by a bus, 3 died of other causes, one operator while not killed has permanent amnesia. Of the thirty cases, in which the cause of death was a head injury, 3 had helmets on, although the type and specifications of the helmets are unknown.

Appendix C.

U. S. Department of Transportation
Federal Highway Administration
National Highway Safety Bureau .
Washington, D.C. 20591

June 27,1967

Highway Safety Program Standard 4.4.3

Motorcycle Safety

Introduction

It is clear that there are many actions which can be taken to reduce significantly deaths and injuries from motorcycle accidents. Every State should have a program specifically related to motorcycle operation including requirements for licensing, inspection and safety equipment.

Background

Deaths and injuries from motorcycle accidents doubled between 1963 and 1965. This fact is particularly alarming when it is understood that most of those killed and injured were young people under the age of 25. Motorcycle registrations have jumped from 574,080 in 1960 to 1,914,-700 in 1966. By 1970 the annual increase is expected to reach one million per year. Motorcycle safety takes on grave dimensions in view of the fact that since 1960 the rate of motorcycle fatalities has increased at about the same rate as the number of motorcycles.

Purpose

To assure that motorcycles, motorcycle operators and their passengers meet standards which contribute to safe operation and protection from injuries.

Standard

For the purpose of this standard a motorcycle is defined as any motor-driven vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride within an enclosed cab.

Each State shall have a motorcycle safety program to insure that only persons physically and mentally qualified will be licensed to operate a motorcycle; that protective safety equipment for drivers and passengers will be worn; and that the motorcycle meets standards for safety equipment.

I. The program shall provide as a minimum that:

A. Each person who operates a motorcycle:

1. Passes an examination or reexamination designed especially for motorcycle operation.

2. Holds a license issued specifically for motorcycle use or a regular license endorsed for each purpose.

B. Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways.

C. Each motorcycle passenger wears an approved safety helmet, and is provided with a seat and footrest.

D. Each motorcycle is equipped with a rear-view mirror.

E. Each motorcycle is inspected at the time it is initially registered and at least annually thereafter, or in accordance with the State's inspection requirements.*

II. The program shall be periodically evaluated by the State for its effectiveness in terms of reductions in accidents and their end results, and the National Highway Safety Bureau shall be provided with an evaluation summary.

* See Periodic Motor Vehicle Inspection standard.

Motorcycles, and Rider Deaths Increase Sharply

The number of motorcycles in the U. S. has been rising sharply in recent years, as shown in the table below. Compared with a 26 per cent increase in all motor vehicles since 1961, motorcycles have increased about 200 per cent.
Deaths of motorcycle riders since 1961 have increased 210 per cent. While this is a little less than the increase in motorcycles, indicating that the rate has not increased, the rising number of deaths, and the high death rate as noted below, should be of concern.

Mileage figures for motorcycles are not fully available, but estimates of use indicate that the mileage death rate, based on rider deaths only, may range between 20 and 40 (deaths per 100,000,000 vehicle miles of travel). This compares with the 1966 mileage death rate for all motor vehicles of 5.7, which includes pedestrian and other nonoccupant deaths as well as occupant deaths.

Table 2

Motorcycle* and Total Motor-Vehicle Data, 1960-1966

Year	VEHICLES — Motorcycles No.	Motorcycles Yearly % Change	Total Mot. Veh. No.	Total Mot. Veh. Yearly % Change	DEATHS — Motorcycle Riders No.	Motorcycle Riders Yearly % Change	All Mot. Veh. Occupants No.	All Mot. Veh. Occupants Yearly % Change
1960	575,497	—	74,500,000	—	731	—	29,750	—
1961	595,669	+ 3.5	76,400,000	+ 2.6	697	— 4.7	29,850	+ 0.
1962	660,400	+10.9	79,700,000	+ 4.3	759	+ 8.9	32,300	+ 8.
1963	786,318	+19.1	83,500,000	+ 4.8	882	+16.2	34,700	+ 7.
1964	984,763	+25.2	87,300,000	+ 4.6	1,118	+26.8	37,900	+ 9.
1965	1,381,956	+40.3	91,800,000	+ 5.2	1,515	+35.5	39,450	+ 4.
1966	1,914,700	+38.5	96,100,000	+ 4.7	2,160	+42.6	42,850	+ 8.

Source: Vehicles — U.S. Bureau of Public Roads; Motorcycle rider deaths. 1960-1965 — National Center for Health Statistics; Motorcycle rider deaths, 1966, and motor-vehicle occupant deaths — National Safety Council.

* Includes motor scooter, motorized bicycle, and motorized tricycle.

Taken from *Accident Facts*, 1967 edition.

Severity of Motorcycle Accidents

When a motorcyclist is involved in an accident, his chances of being injured or killed are greater then if he were riding in a vehicle which afforded more protection. A Wisconsin study of motorcycle accidents during 1965 showed that injury or death to motorcyclists occurred in 89.6 per cent of all the accidents involving this vehicle. Nationally, for all types of vehicles, 9.1 per cent of the accidents involved death or injury. New York State studies conducted in 1962 and 1964 showed similar results in that 85.6 per cent of motorcycle accidents involved death or injury. A New Jersey 1965 study reported 90.8 per cent death or injury; Vermont, 80.1 per cent in 1966.

Injuries sustained by motorcyclists involved in accidents tend to be more severe than those to people in accidents involving all vehicles, according to New York State studies. For example, 23 per cent of those injured in motorcycle accidents suffered the most severe type of injury compared with 11 per cent in accidents involving all types of vehicles. New Jersey had similar experience with motorcyclists having serious injury twice as frequently, percentage-wise, as occupants of all vehicles.

The 1964 New York motorcycle study showed a registration death rate (deaths per 10,000 registrations) for all vehicles of 3.3 compared to a rate of 11.9 for motorcycles. The injury rate per 10,000 registrations of all vehicles was 360; for motorcycles, 691.

The actual number of motorcyclists injured annually is not known. However, for 1966, the total is indicated to have been approximately 250,000, including both minor and severe injuries.

Types of Motorcycle Accidents

Collision with other motor vehicles is the predominant type of motorcycle accident. The per cent this type of accident is of all accidents involving motorcycles ranges from 59 per cent in Washington to 82 per cent in Illinois. Non-collision accdients are next in importance.

In collisions with other vehicles, the motorcyclist is not always to blame. Many people have observed that drivers of larger vehicles do not always realize that motorcycles, and especially motor scooters and motor bicycles, are also motor vehicles and should be treated as such. In most cases, automobile drivers claim they simply did not see a motorcyclist in time to avoid an accident.

The directional analysis of motorcycle-other vehicle collisions in New York revealed that 66 per cent of the accidents (133 of 200 studied) involved motorcycle collisions with passenger cars or trucks. Of the two-vehicle collisions, 66 per cent (87 accidents) were right-angle collisions at intersections, parking lot entrance or driveways. A cycle hit a car in 62 cases; a car hit a cycle in 25.

Contributing Circumstances

Due to different categories of possible contributing circumstances to motorcycle accidents, a complete comparison between the state reports is not possible. Wisconsin, Washington and Michigan listed "speed too fast" as the principal circumstance. New York listed "reckless driving" first. Failure to yield right of way was also commonly mentioned as a contributing circumstance in the state studies.

Speed. Although not specifically mentioned in all state reports, speed usually included speed too fast for conditions. Two states, Vermont and Washington, supplied in-

formation on the speed of the motorcycle at the time of the accident. In both studies the speed range most often recorded was 21 m.p.h. to 30 m.p.h. The Washington study indicated that standard-size motorcycles tended to be involved in accidents at a somewhat higher speed than lightweight motorcycles were.

Stopping Distances. Limited tests have recently been conducted to compare the stopping distances of motorcycles and passenger cars. Contrary to popular belief, motorcycle stopping distances are longer than those of passenger cars. How much longer depends upon the type of motorcycle and the experience of the driver.

Time and Day of Week and Month

Motorcycle accidents occur most frequently between 4 p.m. and 6 p.m., according to state studies. These are also the hours during which all motor vehicle accidents occur most often. Motorcycle accidents also frequently occur between 3:00 and 4:00 in the afternoon, and 6:00 and 7:00 in the evening.

The studies indicate Saturday to be the worst day of the week for motorcycle accidents. Again, this is also the worst day for all vehicle accidents. No general statement can be made about which day has the fewest accidents involving motorcycles since the studies vary, showing every week day except Friday for any one state, and, in the case of a Minneapolis, Minnesota study, Sunday.

It is no surprise that the summer months—June, July, and August—have the most motorcycle accidents.

Roads and Weather

The majority of motorcycle accidents (84 to 91 per cent) occur on dry roads. This might be expected since motor-

cycles are not driven much on wet or icy roads. New York shows that most of the accidents occurred on level roads with no traffic control devices present. Accidents happen with equal frequency at intersections and between intersections. A majority of the accidents take place during daylight hours.

There is some indication that loose material, such as gravel, on the roadway, contributes to motorcycle accidents, particularly in those cases where the driver loses control of his machine.

Age, Sex, Residence of Driver

All studies, except New York's, show that a majority of motorcycle operators involved in accidents are young—under 25 years old. With the exception of New York and New Jersey, the other studies show from 45 to 66 per cent of the motorcyclists in accidents are under 20 years of age.

In excess of 90 per cent of the motorcycle drivers were males. However, limited information indicates that about 80 per cent of the people killed or injured were male and 20 per cent were female. Obviously, then, many of the females injured were passengers on the machines.

The Vermont study reported that the motorcycle operator was within five miles of his residence when involved in an accident in 64 per cent of the cases; within 15 miles in 79 per cent. Michigan and New Jersey reported the motorcyclist to be a local resident in about three-fourths of the accidents.

Passengers and Drivers

The only information available on whether the person injured was a driver or passenger comes from newspaper

clippings. These showed that 70.6 per cent of the injured were drivers and 29.4 per cent were passengers. It is possible that these figures are biased toward passengers since accidents involving motorcycles carrying more than one rider are more likely to be reported in newspaper than those involving one rider.

Experience of Driver

Limited information is available on the driving experience of motorcyclists involved in accidents. A survey of 123 patients at the Methodist Hospital in St. Louis Park, Minnesota, and at the Hennepin County General Hospital, Minneapolis, revealed that 20 per cent were riding the motorcycle for only the first or second time. A study of motorcycle accident victims in the Charlottesville, Virginia area showed that 72 per cent of the operators had received no instruction in operating motorcycles. The Vermont study reported 21 per cent of the operators had had driver's licenses for less than one year. Since cycling has increased greatly in recent years and the average age of motorcyclists is young, it could be surmised that most motorcyclists involved in accidents have not had much driving experience.

The hospital study mentioned above reported that 70 per cent of the injured had either rented or borrowed the motorcycle. A study by the Minneapolis Police Department showed similar results. Oregon showed that slightly more than 10 per cent of the motorcycle operators were not legally licensed at the time of the accident.

Part of Body Injured

All studies show that the parts of a motorcyclist's body most often injured are the head, arm, and leg. Internal injuries and multiple injury also commonly occur how-

ever. Apparently the most serious type injury is that occurring to the head. An Illinois study revealed that two-thirds of the motorcyclists killed in the State suffered skull fractures. This type of injury predominated over any other type.

Crash Helmets

Information regarding the percentage of motorcycle riders wearing protective head-gear has not been formally collected. A personal study conducted in Hamilton County, Ohio (Cincinnati and vicinity) indicated that only about 10 per cent of the motorcyclists in accidents wore protective headgear. The Charlottesville, Virginia report showed that 28 per cent of the cyclists injured wore helmets. The prevalence and severity of head injuries (see above) would be a further indication of the unfortunately low use of protective headgear.

A paper presented by R. J. Smeed at the 1964 International Road Safety Congress in London, England, reported the following British experience:

> An analysis of the effect of the wearing of safety helmets by riders of motorcycles showed that the wearing of such helmets reduced by 30-40 per cent the risk of injury to the part of the head that they covered, and reduced the risk of death by 25 per cent in built-up areas and by 50 per cent in non-built-up areas.

While this British study may not fully represent American experience, there can be little doubt that use of proper protective headgear can reduce the frequency and severity of head injuries. The headgear could also give a motorcyclist identity as a motorcyclist and increase his visibility to other motorists. The Council recommends the use

of proper protective headgear for all motorcycle operators and passengers.

Make and Weight of Motorcycle

A statement regarding the accident experience and relative safety of different brands of motorcycles cannot be made. Little information is available on this subject and the information is inconclusive.

An Oregon study commented on the relationship between motorcycle weight and accident severity. The report stated, "There was a tendency for higher percents of personal injury accidents as the weights of the vehicles decreased."

Available statistics indicate, however, that drivers of lightweight motorcycles, motor scooters, and motorized bicycles are somewhat younger than drivers of standard motorcycles. There is also reason to believe these drivers have less driving experience than operators of the larger machines.

Motor Scooter Accidents

A National Safety Council study of 1958 fatal motor scooter accidents showed that 35 per cent of the victims were under 16 years of age although not all were drivers. Sixty per cent of the victims were under 21 years of age. The motor scooter study revealed other facts similar to those presented in this report.

SELECTED REFERENCES

Abbott, Jay L. *Motorcycle Accidents at the University of Virginia Hospital.* Charlottesville, Va., 1967.

Fracture-Trauma Conference. *Motorcycle Injuries: An Increasing Traffic Problem.* Reprinted from *Minnesota Me-*

dicine, Vol. 48, pp. 489-491, April, 1965. St. Paul: Minnesota State Medical Association, 1965.

Illinois Department of Public Works and Buildings. . . . *Traffic Accidents Involving Motorcycles, Motor Scooters, and Motor Bicycles. . . .* Springfield, Ill.: Department of Public Works and Buildings, 1966.

Kaestner, Noel F. *Motorcycle Accident Study.* Salem, Ore.: State of Oregon, 1964 (?).

Michigan State Police. *Michigan Motorcycle and Motor Scooter Data 1962-1966.* Lansing, Mich. (?): State of Michigan (?), 1967.

Minneapolis Police Department. *Motorcycle Accident Information.* Minneapolis: Minneapolis Police Department, 1966.

Moore, John O., et al. *A Review of Motorcycle Safety Problems in New York State.* Albany, N. Y.: State of New York, 1966.

National Safety Council. *Accident Facts.* Chicago: National Safety Council, 1967.

National Safety Council. *Circumstances of Motor Scooter Accidents.* Chicago: National Safety Council, 1959.

National Safety Council. *Safety Education Data Sheet No. 36 rev.,* "Motor-Driven Cycles." Chicago: National Safety Council, 1961.

New Jersey Division of Motor Vehicles. *Summary of Motor Vehicle Traffic Accidents—Motorcycle Accidents Only.* Trenton, N. J.: State of New Jersey, 1966.

New York State Department of Motor Vehicles. *Motorcycle Accidents in New York State in 1962.* Albany, N. Y.: State of New York, 1963.

Smeed, R. J. *Methods Available to Reduce the Numbers of Road Casualties.* A paper presented at the 1964 International Road Safety Congress, London, England. London, England: The Ludo Press Ltd., 1964. The paper

is available from the World Touring and Automobile Organisation (OTA), London, England.

Vermont Department of Motor Vehicles. *Motorcycle Accidents in Vermont, Year 1966.* Montpelier, Vt.: State of Vermont, 1967.

Washington State Patrol. *Motorcycle Accidents in Washington, 1964.* Olympia, Wash.: State of Washington, 1965.

Wisconsin Motor Vehicle Department. *Motorcycle Accident Statistics.* Madison, Wis.: Motor Vehicle Department, 1966.

Prepared by
Statistics Division
National Safety Council
425 N. Michigan Ave.
Chicago, Ill. 60611

NATIONAL SAFETY COUNCIL
425 N. Michigan Ave., Chicago, Ill. 60611

PUBLIC INFORMATION
(312) 527-4800

TWX-D 2/9/68

Contact: Ed Nelson
Extension 411

FOR IMMEDIATE RELEASE TO ALL CHICAGO MEDIA

CHICAGO, ILL., Feb. 9—Motorcycle deaths decreased during 1967, according to preliminary data just announced by the National Safety Council.

The decrease, from 2,050 deaths in 1966 to 1,950 last year—the first reduction after six annual increases, was even more dramatic in the light of large continuing increases in motorcycle use. Motorcycle registrations after

1967 totaled 2,190,000—an increase of 438,000 during the year.

"The indicated 24-per cent reduction in the death rate per 10,000 registered motorcycles during the year is the most encouraging traffic statistic I've seen in several years," said Howard Pyle, Safety Council President.

"It seems very clear that the leadership of the National Highway Safety Bureau in setting standards for motorcycle equipment, motorcycle driver license tests, and the wearing of safety helmets played a major part in this turn-around. Naturally great credit also is due the governors and legislators who acted so promptly on the motorcycle problem."

Pyle explained that by the end of 1967 a total of at least 34 states had special laws regarding motorcycle safety. In the 30 states that require the wearing of helmets, deaths in 1967 decreased as much 59 per cent (In New York) from the previous year. On the other hand, California—which leads the nation in total motorcycle registrations, but has no protective helmet law—saw a 9 per cent increase in motorcycle fatalities.

Eighteen states require a special licensing test; 16 demand special motorcycle safety equipment; and 14 limit lane-of-traffic use and the number allowed to ride a motorcycle at once.

"Probably the special license test is especially important" Pyle said, "since earlier studies showed that a large proportion of motorcycle accidents occur during the first one or two times an individual ever took a machine out for a run. And the helmet is a direct antidote for the high frequency of head injuries—the number one cause of motorcycle death."

"Dr. William Haddon, Jr., director of the National Highway Safety Bureau, has been confronted by many problems and challenges as he has worked to implement the im-